IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

FIRST APPEAL NO. 39 OF 1991

Smt. S. Bhagyalaxmi.... ... ... Appellant.

Versus

Union of India, through the General Manager, Central Railway, Bombay V.T. ... Respondent.

-: ALONG WITH :-

FIRST APPEAL NO. 41 OF 1991

S.V.Ramanna Murthi as natural guardian for Master Ramprasad V. .. Appellant.

Versus

Union of India, through the General Manager, Central Railway, Bombay V.T. ... Respondent.

-: ALONG WITH :-

FIRST APPEAL NO. 42 OF 1991

Anuradha Murthy..... ... ... Appellant.

Versus

Union of India, through the General Manager, Central Railway, Bombay V.T. ... Respondent.

-: ALONG WITH :-

FIRST APPEAL NO. 43 OF 1991

S. V. Ramanna Murthi... ... ... Appellant.

Versus

Union of India, through the General Manager, Central Railway, Bombay V.T. ... Respondent.

-: ALONG WITH :-

FIRST APPEAL NO. 821 OF 1991

P. V. Ramnathan..... ... ... Appellant.

Versus

Union of India, through the General Manager, Central Railway, Bombay V.T. ... Respondent.

Mr. C. M. Jha for the Appellants.
Mr. V. G. Paste for Appellant in F.A.No.821 of 1991.
Mr. A. N. Samant for Respondents.

CORAM : ANOOP V. MOHTA, J.

DATED : 6TH DECEMBER, 2005.

J U D G E M E N T:

These are five appeals filed by the respective claimants / appellants against the judgment and order

dated 29th June, 1989 passed by the Joint Civil Judge (Senior Division) Thane (Railway Accident Tribunal) in Railway Accident Claim Nos.14 of 1988, 15 of 1988, 12 of 1988 and 13 of 1988 and order dated 27th July, 1989 in Railway Accident Claim No.16 of 1988 whereby their respective applications for compensation under Section 82(A) of the Indian railways Act, 1890 (for short "Railway Act of 1890") were rejected. As all the appeals are arising out of a common accident and as the issues are same and as contended by all the parties, by this common judgment these appeals are disposed off.

2. On 4th July, 1988 a train Minar Express 101 Dn. met with an accident between Byculla and Chinchpokli Railway Station of Central Railway, Bombay, in which the claimants / appellants sustained various injuries on various parts of the body as mentioned and referred in their respective applications. Therefore, on 10th August, 1988 they preferred separate applications for compensation under the Railways Act of 1890 for the respective amount as produced below:

Sr. No.	Name and Application No.	Injuries	Amount claimed	Remarks
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1)	Smt. S. Bhagyalaxmi Appln.No.14/1988 & F.A.No.39 of 1991.	Unconsci-ous, Vomitting ENT bleeding, tenderness on chest, wound on forehead and view with left eye sight.	1,10,000
2)	S.V.Ramanna Murthi Appln.No.15/1988 & F.A.No.41 of 1991	On left shoulder, there was dislocat-ion	75,000
3)	Anuradha Murthi Appln.No.12/1988 & F.A. No.42 of 1991	fracture, mental torture & pain and swelling over the left foot.	72,500
4)	S.V.Ramanna Murthi Appln.No.13/1988 & F.A. No.43 of 1991	Lower back swelling tenderne-ss over right D-L region & swelling in left knee.	64,000
5)	P.V. Ramnathan Appln.No.16/1988 & F.A.No.821/1991	fracture to the ribs.	50,000

3. On 29th June, 1989 all the above applications were rejected after considering the issues in favour of the

applicants/appellants and specially by observing that the applicants/appellants were bonafide passengers on the day of accident. The Tribunal has also accepted that they sustained injuries during the said accident. However, the learned Tribunal not granted any compensation as prayed for want of material and further observing that the amount claimed by the applicants / appellants were exorbitant and imaginary and thereby rejected the claims. The applicants / appellants, therefore, preferred the respective first appeals.

4. Heard learned Counsel appearing for the parties. An additional compilation is taken on record with the consent of the parties.

5. On the date of accident, undisputedly, Railway Accident (Compensation) Rules, 1989 (for short "Compensation Rules, 1989") dated 19th September, 1989 issued in exercise of the powers conferred by Section 82A of the Railways Act, 1890 and in supersession of the earlier Rules, were in force. These rules defined accident "of the nature described in Section 82 A of the Railways Act, 1890". The said Compensation Rules, provides the amount of compensation payable in respect

of death or injury, as specified in the Schedule. Rule 3 clause (1) and (3) as relevant, is reproduced as under:-

> "(1)The amount of compensation payable in respect of death or injuries shall be as specified in the Schedule.
>
> (3) The amount of compensation payable in respect of any injury (other than an injury specified in the Schedule or referred to in sub-rule (2) resulting in pain and suffering, shall be such as the Claims Tribunal may after taking into consideration medical evidence, besides other circumstances of the case, determine to be reasonable:
>
> Provided that if more than one injury is caused by the same accident, compensation shall be payable in respect of each such injury.
>
> Provided further that the total compensation in respect or all such injuries

shall not exceed rupees twenty thousand." *(emphasis added).*

6. The appellants / claimants contended that at the stage of final hearing of the first appeal those rules of 1989 were superseded and have been replaced by the rules under the new Railway Act, 1989. The Railway Accidents and Untoward Incidents (Compensation) Amendment Rules, 1997 which are in force since 1st November, 1997. Therefore, contended that based on this amended rules, the appellants / claimants are entitled for the compensation. Learned Counsel for the respondents, however, opposed the same.

7. The rule as referred above framed under the Railways Act, and as reproduced definitely, take note of, a head for the compensation in respect of injury, pain and sufferings, even if it is without causing any disability. The Tribunal should, therefore, in such circumstances can determine to award such reasonable compensation, as prescribed not exceeding the limit. It further provides that such compensation shall be payable in respect of each injury, but the aggregate amount of such compensation should not exceed Rs.20,000/- at the relevant time and now as per the

amended 1997 Rules, this amount is Rs.80,000/-. In the present case, admittedly, all these applicants / appellants had received Rs.2,000/- immediately after the accident. Now the question is how much additional compensation they are entitled in the facts and circumstances of the case.

8. The Railway Tribunal, rejected their claims after going through the evidence as well as the material placed on record, as no case was made out by the applicants / appellants to support their respective claims of compensation as referred above.

9. The learned Counsel appearing for the appellants has relied on the case of **Rathi Menon vs. Union of India** ((2001) 3 SCC 714) and thereby contended that the relevant date of compensation is the date of determination by the Railway Tribunal and not the date of incident. The relevancy of the date of incident is only that the right to claim compensation was acquired on such date. Therefore, even if the incident occurred before amendment of Rules and Schedule to the Railways Act, the claimants would be entitled to claim benefit of the higher rates prevailing post-amendment. Without discussing further on this issue, in the fact

and circumstances of the case and in view of the principle, as observed in **Geetha vs. Union of India** (2005 ACJ 817) following Rathi Menon **(Supra)** and **N. Paramaswaran Pillai & Ors. vs. Union of India & Ors.** (2002 ACJ 841, SC), I am proceeding to consider the case of the appellants as under.

10. In the present case, as observed, the appellants / applicants have failed to produce on the record the substantial material in support of their case. Therefore, there is no reason to interfere with the findings given by the Railway Tribunal to this extent.

11. If the fact of accident is not disputed, the pain and suffering by the claimants also cannot be disputed. In view of the existing provisions of the compensation rules, the appellants / applicants are entitled for the compensation for such pain and suffering. There is no reason that the appellants / applicants could not have been awarded such compensation for the pain and suffering. In absence of any positive material and/or proof of injuries on record, I am of the view that considering the facts and circumstances of the case, on the basis of 3 to 4 injuries as referred in para 2 to each appellants /

applicants, they are entitled at least Rs.10,000/- towards the compensation for the pains and sufferings. This Rs,.10,000/- need to be considered as lumpsum money which will be subject to deduction of Rs.2,000/- which the appellants / applicants had already received immediately after the incident. Taking these all issues in consideration, the amount of Rs.10,000/- in lumpsum (Rs.10,000/- minus Rs.2,000/- is equal to Rs.8,000/-) need be paid to the respective applicants / appellants.

13. In view of the decision of the Apex Court in **T. N. State Transport Corporation Ltd. vs. S. Rajapriya & Ors.,** ((2005) 6 SCC 236) the appellants are also entitled to the interest at the rate of 7.5% p.a. from the date of their applications. In the result, the applicants / appellants are entitled for amount of Rs.8,000/- with interest at the rate of 7.5% p.a. from the date of their application.

14. The impugned Judgments and Orders dated 29th June, 1989 in Railway Accident Claim Nos.14 of 1988, 15 of 1988, 12 of 1988 and 13 of 1988 and order dated 27th July, 1989 and Judgment and Order in Railway Accident Claim No.16 of 1988 are quashed and set aside

and the respective appeals are allowed only to the above extent.

15. They are hereby awarded additional amount of Rs.8,000/- with interest at the rate of 7.5% p.a. from the date of the application. This amount to be paid by the respondent herein to the respective applicants / appellants within sixty days from today, failing which there shall be future interest at the rate of 7.5% p.a. till payment.

16. All these First Appeal Nos. 39 of 1991, 41 of 1991, 42 of 1991, 43 of 1991 and 821 of 1991 are allowed. In the circumstances of the case, there shall be no order as to costs.

Sd/-

(ANOOP V. MOHTA, J.)